

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Herbert Lee Matthews, Jr.,)	
)	
Petitioner,)	Civil Action No.: 6:15-cv-3194-RMG
)	
v.)	
)	
Warden J. McFadden,)	ORDER
)	
Respondent.)	
)	

This matter comes before the Court on the Report & Recommendation (R & R) of the Magistrate Judge (Dkt. No. 31). For the reasons below, the Court declines to adopt the R & R as the order of the court and recommits the case to the Magistrate Judge to address the merits of the motion for summary judgment.


On August 17, 2015, Petitioner filed a *pro se* petition for writ of habeas corpus. (Dkt. No. 1). Respondent filed a motion for summary judgment on December 15, 2015 (Dkt. No. 25), and the Magistrate Judge entered a *Roseboro* order directing the Petitioner to file his response within 34 days (Dkt. No. 26). Petitioner failed to respond within the allotted time, and the Magistrate Judge issued a second order directing Petitioner to respond by February 16, 2016 or risk dismissal for failure to prosecute. (Dkt. No. 29). Petitioner failed to respond by February 16, and on February 17, 2016, the Magistrate Judge issued an R & R recommending that this court dismisses the petition with prejudice for failure to prosecute. (Dkt. No. 31).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made.

Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

On February 17, 2016, Petitioner mailed a response to Respondent’s motion for summary judgment, and the Court received the response on February 19, 2016. Petitioner subsequently filed a response to the R & R, in which he explains that he had been “under institutional quarantine[] and understands the possible consequences of failing to respond adequately.” (Dkt. No. 34 at 1). For good cause shown, the Court declines to adopt the R & R and recommits the matter to the Magistrate Judge to address the merits of Respondent’s motion for summary judgment. (Dkt. No. 25).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

March 9, 2016
Charleston, South Carolina